

OFFICE OF THE MONITOR

*NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.*

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August 14, 2023

**VIA ECF**

The Honorable Laura Taylor Swain  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10006

*Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)*

Dear Chief Judge Swain,

We write in response to the Court's direction to the Monitoring Team at the August 10, 2023 Status Conference to clarify the record regarding certain statements in Dr. James Austin's declaration dated August 8, 2023 (dkt. 562-1). Dr. Austin is a consultant retained by the Department pursuant to the Second Remedial Order, §1, ¶ (i)(f) (dkt. 398) and modified pursuant to the Court's November 2, 2021 Order (dkt. 415). The Monitor subsequently recommended that the Department retain Dr. Austin to support its work to create a program model to develop an effective strategy to respond to people in custody who commit serious violence that enhances the safety of both people in the general population and staff, who are thereby protected from potential assailants, as required by the Action Plan, § E., ¶ 4. *See* Monitor's June 30, 2022 Report at pg. 26.

The Monitoring Team provides the following clarifications:

- **Re-Assignment of Incarcerated Individuals Following AMKC's Closure:**
  - Dr. Austin's Declaration: Paragraph 8(e) notes that "Anna M. Kross Center [(“AMKC”)] facility has been closed and PICs re-assigned to the renovated and more secure Otis Bantum Correctional Center [(“OBCC”).]"
  - Monitoring Team's Clarification: AMKC is no longer being utilized to house incarcerated individuals, but the facility is still being utilized for certain operations, such as food preparation. With respect to the incarcerated individuals who were previously housed at AMKC, reports from Department leadership, Department records, and the Monitoring Team's site work inspections reflect that incarcerated individuals who were housed at AMKC at the time of closure were transferred to multiple facilities and were not exclusively moved to OBCC.
- **Management of Incarcerated Individuals Following Serious Incidents of Violence:**
  - Dr. Austin's Declaration: Paragraph 10 explains that "Based on the review of PICs who should be assigned to an [Enhanced Supervision Housing] type program but are not due to a mental health condition, the NYC DOC is now developing, in coordination with the Monitor and Correctional Health Services (CHS), plans to establish a Behavioral Health Unit (BHU) which when operational will replace the current [Clinical Alternatives to Punitive Segregation “CAPS”] unit and allow people with mental health restrictions who are assaulting others to be placed in a more secure and therapeutic setting. The first planning meeting is now scheduled for August 15, 2023."
  - Monitoring Team's Clarification: The Monitoring Team has had initial discussions with Department officials and Dr. Austin to better understand the

circumstances surrounding incarcerated individuals who may have met the criteria for placement in ESH, but were excluded based on a mental health condition.

These discussions included exploring the potential development of a new housing unit or perhaps repurposing housing units already in existence. However, the Monitoring Team believes it is premature to posit that a new housing unit model, such as the BHU mentioned in Dr. Austin's declaration, is going to be created or that CAPS (Clinical Alternatives to Punitive Segregation), an existing program model, is going to be eliminated. More information is necessary and discussion among the Monitoring Team, Department leadership, Dr. Austin and CHS is needed before any such unit may be developed. Ultimately, the Department will need to seek approval from the Monitor pursuant to § E., ¶ 4 of the Action Plan once a plan is devised. An initial meeting including the Monitoring Team, Dr. Austin and relevant stakeholders from the Department and CHS was recently scheduled for the end of August 2023.

- **Monitor Findings Regarding Progress on the Action Plan:**

- Dr. Austin's Declaration: Paragraph 11 states that "The Monitor agrees that DOC has made substantial progress in some areas since the Action Plan was adopted."
- Monitoring Team's Clarification: As an initial matter, Dr. Austin is a consultant for the Department. He is not a member of the Monitoring Team and is not authorized to speak for the Monitor. Further, this statement is incorrect. The Monitor's July 10, 203 report on page 173 states "the Monitor's assessment is that the City and Department have **not made substantial** and demonstrable progress in

implementing the reforms, initiatives, plans, systems, and practices outlined in the Action Plan.” (emphasis supplied).

The Monitoring Team, as part of our work under the *Nunez* Court Orders, is currently evaluating Dr. Austin’s findings and conclusions included in his declaration. Additional information will be shared in future Monitor’s Reports. Please advise if the Court requires any further information at this time. We appreciate the Court’s attention to this matter.

Sincerely,

s/ Steve J. Martin  
Steve J. Martin, *Monitor*  
Anna E. Friedberg, *Deputy Monitor*